IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-101

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner
v.
FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA, ET AL.,
Respondents

No. 76-205

THE HONORABLE SHIRLEY CHISHOLM,
NATIONAL ORGANIZATION FOR WOMEN, and
OFFICE OF COMMUNICATION OF THE
UNITED CHURCH OF CHRIST,
Petitioners
v.
FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA, ET AL.,
Respondents

On Petitions for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT CBS INC. IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

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OPINIONS BELOW

The declaratory ruling of the Federal Communications Commission was contained in a Memorandum Opinion and Order released September 30, 1975, 55 F.C.C.2d 697, set forth at pages 1a-22a of the Appendix to the Democratic National Committee Petition for Certiorari ("DNC App."). The United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's order, Judge Wright dissenting, in an opinion entered April 12, 1976 (DNC App. at 23a-126a). The Court of Appeals denied rehearing and rehearing *en banc* in orders entered May 13, 1976 (DNC App. at 127a-131a).

STATUTE INVOLVED

Section 315(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 315(a), provides:

> "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—
>
> (1) bona fide newscast,
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> (2) bona fide news interview,
>
> (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
>
> (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

> shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

QUESTIONS PRESENTED

1. Whether the Federal Communications Commission erred in holding that on-the-spot broadcast coverage of candidate press conferences and certain candidate debates is within the scope of the "bona fide news events" exemption from the "equal opportunities" requirement of Section 315 of the Communications Act.

2. Whether the Commission was required by law to engage in rulemaking proceedings before adopting its declaratory ruling on the applicability of Section 315 to candidate press conferences and debates.

STATEMENT OF FACTS

This case involves a declaratory order of the Federal Communications Commission interpreting the applicability of the "equal opportunities" requirement of Section 315 of the Communications Act[1] to broadcast news coverage of press conferences and debates involving candidates for political office.

Under Section 315, a broadcast licensee who "permit[s]" a legally qualified candidate for office to "use" his broadcasting station must afford equal opportunities for use of the station to all other candidates for that

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[1] 47 U.S.C. § 315 (1970).

office. A controversial Commission decision [2] applying the equal opportunities requirement to news coverage led Congress to amend Section 315 in 1959. The amendment provides that the appearance by a candidate in the course of certain common forms of news broadcasts does not constitute a "use" of broadcast facilities for purposes of the equal opportunities requirement. The categories of news broadcasts exempted by this amendment include, *inter alia*, "on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto)." [3]

This case arose out of two petitions filed with the Commission. One was submitted by respondent CBS Inc. ("CBS") in July, 1975, shortly after President Ford announced his candidacy for reelection. The CBS petition, noting that the President had become a "legally qualified candidate" for purposes of Section 315 more than 15 months in advance of the general election, sought a declaratory ruling that broadcast licensees who present on-the-spot coverage of Presidential press conferences in the exercise of their professional news judgment will not become obligated to provide equal time to every opposing candidate. The CBS petition asked the Commission to overrule its 1964 declaratory ruling [4] that coverage of the press conferences of Presidential candidates could not qualify for exemption from the equal opportunities requirement either as bona fide news interviews

[2] *Columbia Broadcasting System, Inc. (Lar Daly)*, 18 Pike & Fischer, R.R. 238, *recon. denied*, 26 F.C.C. 715 (1959).

[3] 47 U.S.C. § 315(a)(4) (1970). The amendment also exempts bona fide newscasts, bona fide news interviews, and bona fide news documentaries (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary). 47 U.S.C. §§ 315(a)(1), (a)(2), & (a)(3).

[4] *Columbia Broadcasting System, Inc.*, 40 F.C.C. 395 (1964).

or as on-the-spot coverage of bona fide news events.[5] The other petition was submitted to the Commission by the Aspen Institute Program on Communications and Society ("Aspen"). The Aspen petition asked the Commission to reexamine two 1962 decisions [6] which had held that broadcast coverage of candidate debates could not qualify for exemption from Section 315 as "on-the-spot coverage of bona fide news events." Several individuals and organizations, including petitioners The Honorable Shirley Chisholm ("Chisholm"), National Organization for Women ("NOW"), and Democratic National Committee ("DNC"), submitted comments to the Commission in response to the CBS and Aspen proposals.

The Commission acted on the petitions by a Memorandum Opinion and Order released on September 30, 1975. In that order the Commission overruled its prior interpretation of Section 315(a)(4), as applied to press conferences and debates, on the ground that it had been based on a misreading of the legislative history underlying the 1959 amendments. The Commission held that the exemption for "on-the-spot coverage of bona fide news events" embodied in Section 315(a)(4) encompassed candidate press conferences carried "live and in their entirety," and candidate debates of the type involved in the 1962 cases,[7] if coverage was the result of the broadcast licensee's good faith journalistic judgment.

[5] CBS limited its petition to Presidential press conferences because of the singular newsworthiness of the Presidency, as well as the special importance of keeping open this avenue of communication between the President and the public. Contrary to the assertion by petitioners in No. 76-205 (Petition at 4), however, CBS did not argue "that press conferences of candidates for offices other than the Presidency should still remain subject to the rule of equal opportunities."

[6] *The Goodwill Stations, Inc.*, 40 F.C.C. 362 (1962); *National Broadcasting Co. (Wyckoff)*, 40 F.C.C. 370 (1962).

[7] *Goodwill* and *Wyckoff* both involved remote coverage of debates conducted under the auspices of groups independent of the broadcaster ("non-studio debates").

Chisholm, NOW, and DNC petitioned for review in the United States Court of Appeals for the District of Columbia Circuit. On April 12, 1976, the court issued its decision affirming the Commission's order, Judge Wright dissenting. Rehearing and rehearing *en banc* were denied on May 13, 1976.

DNC filed a petition for a writ of certiorari on July 23, 1976 (No. 76-101). Chisholm, NOW, and the Office of Communication of the United Church of Christ submitted a joint petition on August 11, 1976 (No. 76-205).

ARGUMENT

There is no sound reason for the Court to grant certiorari in this case. The decision of the court below does not conflict with any prior holding of this Court or of any circuit court of appeals. It involves a narrow issue of statutory construction that received careful consideration by the Commission and the Court of Appeals, and no useful purpose would be served by further review. The decision below reflects a construction of Section 315 of the Communications Act fully consistent with the Congressional intent evident in the plain language and legislative history of the statute. Moreover, the decision promotes the goals of the First Amendment by avoiding inhibitions on the free flow of news. Indeed, as recent decisions by this Court make clear, a contrary interpretation of Section 315 would raise the most serious First Amendment questions.

I. Construction of Section 315

The Commission's declaratory ruling presents a logical interpretation of Section 315 that gives effect to the plain language of the provision exempting "on-the-spot coverage of bona fide news events." As the Commission recognized, it is indisputable that some candidate press conferences and debates are generally considered news-

worthy[8] and therefore within the commonly-accepted meaning of the term "news event." Absent some clear indication that Congress intended a different meaning of "news event," the Commission's earlier interpretation categorically excluding press conferences and debates from the Section 315(a)(4) exemption could not stand.

The Commission exhaustively examined the legislative history and found that it did not reflect such a Congressional intent to exclude press conferences or debates from the scope of the "news events" exemption.[9] The majority of the court below agreed. Moreover, the court found "substantial support" in the legislative history for the Commission's holding that such news events are "bona fide" for purposes of Section 315 when covered in the exercise of the broadcaster's good faith journalistic judgment. In particular, the court noted that the Commission's interpretation drew support from the broad Congressional policies repeatedly expressed in the legislative record.

Primary among these policies was the desire of Congress to encourage coverage of political news and to restore to broadcasters greater journalistic discretion. As the court below found, the "basic purpose" of the 1959 amendment was:

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[8] As the Court of Appeals observed, the inherent newsworthiness of such events is "no greater or less than that of 'political conventions and activities related thereto,' events expressly within the scope of the exemption." Slip Opinion at 20, DNC App. at 42a.

[9] The Commission determined that it had misread the legislative history when it ruled in 1962 that Congress intended the on-the-spot news coverage exemption to apply only where the candidate's appearance was "incidental" to the event being covered. As the Commission recognized in its ruling under review, an "incidental" test did appear in the 1959 House bill to amend Section 315 but was dropped from the final Conference Committee bill except with regard to news documentaries. *Memorandum Opinion and Order*, 55 F.C.C. 2d at 703-05, DNC App. at 7a-9a; see Slip Opinion at 11-12, DNC App. at 33a-34a.

> "[t]o enable what probably has become the most important medium of political information to give the news concerning political races to the greatest possible number of citizens, and to make it possible to cover the political news to the fullest degree." [10]

Echoing this theme, Chairman Harris of the House Committee on Interstate and Foreign Commerce observed that the concept of absolute equality among candidates must give way in part to two other "worthy and desirable" objectives:

> "First, the right of the public to be informed through broadcasts of the political events; and Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events." [11]

Congress chose to accomplish this goal by establishing a body of exemptions "which appropriately leaves reasonable latitude for the exercise of good faith news judgment on the part of the broadcasters and networks." [12] Thus, the 1959 amendment reflects a Congressional decision to rely not on mechanical rules but on the journalistic commitment of the broadcast press to ensure full, fair news coverage of political candidates.[13] As Senator Case stated:

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[10] Slip Opinion at 15, DNC App. at 37a, quoting 105 Cong. Rec. 14451 (1959) (remarks of Senator Holland).

[11] *Hearings on Political Broadcasts—Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce*, 86th Cong., 1st Sess. 2 (1959) (comment of Chairman Harris), quoted in Slip Opinion at 6, DNC App. at 28a.

[12] 105 Cong. Rec. 17782 (1959) (remarks of Chairman Harris), quoted in Slip Opinion at 23, DNC App. at 45a.

[13] The Senate Report expressly stated that the Committee members had "faith in the maturity of our broadcasters and their recognition to serve the public interest." S. Rep. No. 562, 86th Cong., 1st Sess. 14 (1959). See also 105 Cong. Rec. 3171 (1959) (remarks of Representative Cunningham); *id.* at 5405 (remarks of Senator Allott).

> "An informed electorate is essential in democracy. Feeding the news to the public by a measuring spoon or regulating its quantity by a stopwatch is hardly the way to accomplish this desired objective. Rather, reporting of the news should be left to the discretion of the news media." [14]

The Court of Appeals found no support in the legislative history for petitioners' contention that Congress intended a narrow construction of the four exemptions.[15] In light of the "substantial support" for the Commission's construction and Congress' evident intention to look to the Commission for interpretation and application of Section 315,[16] the Court of Appeals properly decided to defer to the Commission's construction of the statute.[17]

Petitioners do not suggest that the Commission lacks authority to interpret the equal opportunities provisions, or that the legislative history does not provide substantial support for the Commission's interpretation. Rather, they argue—as did Judge Wright in his dissent—that the Commission should have accorded more weight to certain

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[14] 105 Cong. Rec. 8746 (1959).

[15] See Slip Opinion at 18, DNC App. at 40a.

[16] See Slip Opinion at 15-16, DNC App. at 37a-38a, quoting S. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959).

[17] The DNC petition incorrectly suggests that the Court of Appeals "candidly admitted inability to find a clear legislative history" to support the Commission's decision. DNC Petition at 12. To the contrary, the court determined only that the legislative history is inconclusive on the issue of whether Congress, in creating exemptions to Section 315, "intended specifically to include or exclude non-studio debates and candidate's press conferences." Slip Opinion at 15, DNC App. at 37a. The court found that the legislative history was quite clear, however, in expressing the policies which Congress intended to promote, and that those legislative policies provided substantial support for the Commission's decision. Slip Opinion at 15-23, DNC App. at 37a-45a.

isolated parts of the voluminous legislative history.[18] The arguments raised in the petitions for certiorari were fully disposed of in the opinions of the Commission and the Court of Appeals, and there is no reason for this Court to undertake its own examination of the legislative record.

Contrary to Judge Wright's dissent, the Commission's interpretation of the "news events" exemption is fully consistent with the other provisions of Section 315. There is no basis for the contention of petitioners in No. 76-205 that the Commission's decision creates an exemption "which effectively makes the other three exemptions superfluous." [19] Each of the four exemptions to Section 315 relates to a different news format, and while the categories occasionally may overlap, no one category could ever entirely subsume the other three. Simply stated, live on-the-spot coverage of a news event is not the same as a newscast, news interview, or news documentary. Nor has the Commission provided an exemption "which swallows the rule of equal opportunities by effectively repealing it." [20] Section 315 continues to apply not only to coverage of news events outside the scope of the Section 315(a)(4) exemption as construed by the Commission, but also to many other common types of candidate appearances, including:

—candidate appearances in broadcast time purchased for use by the candidate;

—candidate appearances in broadcast time made available by the licensee without charge for unrestricted use by the candidate; [21]

—candidate appearances in entertainment programs; [22]

—candidate appearances in non-regularly scheduled news interview broadcasts;

—candidate appearances in news documentaries where the candidate is a central subject of the documentary.

The 1960 resolution suspending Section 315(a) for that year's Presidential and Vice-Presidential campaigns does not, as Judge Wright suggests, indicate that Congress intended on-the-spot coverage of candidate debates to be outside the scope of the 1959 exemptions. While the 1959 amendment and the Commission's interpretation of it in this case apply only to specified forms of news coverage, the 1960 resolution had the broad purpose of

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[18] Petitioners in No. 76-205 contend, for example, that the Commission should have found candidate debates ineligible for exemption as "news events" because Congress considered but rejected several bills that would have provided a specific exemption for debates. Petition at 9 n.9. The legislative history shows, however, that deletion of the debate provision represented not a substantive alteration in the bill but rather a change in degree of specificity. Early drafts of the 1959 statute attempted to list exhaustively the various types of programs that could be exempt from Section 315; the final version, on the other hand, opted for a more general list of broad program categories. Slip Opinion at 16-17 n.17, DNC App. at 38a-39a n.17.

In the case of press conferences, not even this weak argument of Congressional rejection of other bills is available. Indeed, the only mention of press conferences in the legislative history indicates that Congress intended to permit broadcasters to cover such events without incurring equal opportunities obligations. Expressing the need for news coverage exemptions to Section 315, Representative Macdonald stated on the House floor:

> "If [a] ruling [applying Section 315 to news coverage] were to be followed vigorously, minor candidates for major offices, including a variety of freaks and crackpots could create chaos on the airlanes before and during political campaigns. In 1956, for example, 9 minor contenders campaigned for the presidency, gaining from 8 to 175,000 votes apiece. *Had each of these demanded equal time as President Eisenhower after his news conferences, the confusion can easily be imagined.*" 105 Cong. Rec. 16236 (1959) (emphasis added).

[19] Petition at 14 n.17.

[20] *Id.*

[21] Indeed, it was these types of unrestricted candidate appearances that the original framers of the equal opportunities requirement sought primarily to regulate. See generally S. Rep. No. 562, 86th Cong., 1st Sess. 6, 8-9 (1959).

[22] See *Paulsen* v. *FCC*, 491 F.2d 887 (9th Cir. 1974).

facilitating any type of coverage of, or provision of time to, candidates for President and Vice-President.[23]

There is no basis for Judge Wright's contention that Congress "ratified" the Commission's earlier, contrary interpretations of Section 315 by failing to overrule them legislatively. Just last term this Court restated the fundamental principle that:

> "[t]he verdict of quiescent years cannot be invoked to baptize a statutory gloss that is otherwise impermissible. This Court has many times reconsidered statutory constructions that have been passively abided by Congress. Congressional inaction frequently betokens unawareness, preoccupation, or paralysis." *Barrett* v. *United States*, 423 U.S. 212, 223 n.8 (1976), quoting *Zuber* v. *Allen*, 396 U.S. 168, 185-86 n.21 (1969).[24]

This is not a case involving reenactment of a statute which arguably could be construed as approval of an outstanding interpretation of it. Congress never has reenacted the exemptions contained in the 1959 amendment.[25] Indeed, as the Court of Appeals observed, Congress has done "nothing that can be interpreted as active approval of the Commission's 1962 interpretation." To the contrary,

> ". . . Congressional inaction in this instance is entirely consistent with the interpretation that Congress was willing to leave to the Commission the interpretation of the exemptions as they applied to specific program formats. In this sense, Congressional acquiescence in the Commission's [earlier] interpretation does not indicate that it was the only, or the best, interpretation." [26]

[23] See generally S. Rep. No. 1539, 86th Cong., 2d Sess. (1960). Indeed, the debates that were televised in the aftermath of the 1960 resolution were "studio debates" conducted under the auspices of the broadcast networks and therefore would not have been exempt under the Commission's ruling in the present case.

[24] See also *Girouard* v. *United States*, 328 U.S. 61, 69 (1946).

[25] The court below rejected the notion that the 1962 and 1964 rulings had been incorporated into law through "reenactment" when Section 315 was amended by the Federal Election Campaign Act of 1971, 86 Stat. 3 (1972). As the court noted, "[t]he FECA amendments [to Section 315] were in no way concerned with the equal time exemptions, and, in fact, by-passed Section 315(a) altogether." Slip Opinion at 29, DNC App. at 51a.

The Commission's decision will not lead to a reduction of the amount of broadcast time devoted to minority party candidates, contrary to the contention of petitioners in No. 76-205. Petitioners mistakenly assume that equal opportunities requirements actually increase the amount of air time devoted to such candidates. In reality, however, a broadcaster faced with a limited supply of air time and a large number of candidates for office [27] frequently is not in a position to provide equal time to numerous candidates for an office. Broadcasters therefore seek to avoid incurring Section 315 obligations, and the practical result is that where equal opportunities requirements apply, coverage of all candidates is drastically reduced, thereby depriving the public of valuable news and information.[28] The exemptions to Section 315 enable broadcast journalists to cover serious candidates

[26] Slip Opinion at 27-28, DNC App. at 49a-50a.

[27] For example, in 1972 there were at least 11 candidates for President; in 1968, 14. See Slip Opinion at 9 n.7, DNC App. at 31a n.7. A report dated August 19, 1976 on file at the Federal Election Commission lists some 89 candidates for the Presidency in 1976, not including those identified as Democrats or Republicans.

[28] Congress recognized this problem in 1959 when it voted to exempt bona fide news programs from equal opportunities requirements. As the Senate Report noted:

> "The inevitable consequence [of applying the equal opportunities concept to news] is that a broadcaster will be reluctant to show one political candidate in any news-type program less he assumes the burden of presenting a parade of aspirants." S. Rep. No. 562, 86th Cong., 1st Sess. 9 (1959), quoted in Slip Opinion at 6 n.5, DNC App. at 28a n.5.

without undertaking the impractical burden of providing equal time to a multitude of fringe candidates.

By freeing the broadcast press to cover important news events involving candidates, the Commission's construction of Section 315 promotes the interest in an informed public that underlies the First Amendment's guarantee of a free press. Removal of the inhibitions imposed by the equal opportunities requirement encourages the "speech concerning public affairs" that this Court has called "the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964). See generally *Buckley* v. *Valeo*, 424 U.S. 1, 14-15 (1976). Of course, journalistic discretion carries with it potential for abuse, but this risk is outweighed by the need for a free and vigorous press:

> "For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors—newspaper or broadcast—can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values. The presence of these risks is nothing new; the authors of the Bill of Rights accepted the reality that these risks were evils for which there was no acceptable remedy other than a spirit of moderation and a sense of responsibility—and civility—on the part of those who exercise the guaranteed freedoms of expression." *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 124-25 (1973).

The construction of Section 315 proposed by petitioners would raise serious First Amendment questions—questions which quite properly ought to be avoided. See, *e.g.*, *Schneider* v. *Smith*, 390 U.S. 17, 26 (1968). The chilling effect of this construction of Section 315 on broadcast coverage of important news events, and the corollary interference with the public's "right to know," would be

only slightly less onerous than a direct ban on coverage of these events. Just recently, this Court confronted a similar threat to First Amendment values in the form of a Florida statute granting candidates a right to equal space to respond to newspaper criticism. As the Court said in striking down that law:

> "Faced with the penalties that would accrue to any newspaper that published news or commentary arguably within the reach of the right-of-access statute, editors might well conclude that the safe course is to avoid controversy. Therefore, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced. Government-enforced right of access inescapably 'dampens the vigor and limits the variety of public debate.'" *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, 257 (1974) (footnote omitted), quoting *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 279 (1964).

II. The Commission's Compliance with the Administrative Procedure Act

Petitioners in No. 76-205 request that this Court grant certiorari to consider the question of the Commission's compliance with the Administrative Procedure Act ("APA") in this case. They argue that in adopting its new interpretation of Section 315(a)(4), the Commission was obliged to engage in notice-and-comment rulemaking pursuant to Section 4 of the APA, 5 U.S.C. § 553 (1970), and that the Court of Appeals' holding to the contrary is inconsistent with principles set forth in prior decisions of this Court.

There is no basis for petitioners' contention. This Court has made clear that even where an agency is engaged in more than straightforward statutory construction—where it is "filling in the interstices" of a statute or developing new legal standards that will in-

evitably have application in future cases—the agency has discretion in determining whether to employ adjudicatory or rulemaking proceedings: An agency "is not precluded from announcing new principles in an adjudicative proceeding and . . . the choice between rulemaking and adjudication lies in the first instance within the [agency's] discretion." *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 294 (1974).[29]

Here the Commission's decision to act by declaratory order rather than notice-and-comment rulemaking was particularly appropriate in light of the fact that the only question at issue was one of statutory construction. Indeed, the APA requirements of notice and comment in connection with rulemaking simply have no application to interpretations of a statute by the agency, even if those interpretations take the form of "interpretative rules." Congress exempted interpretative rules from 5 U.S.C. § 553 because the purpose of the notice-and-comment procedure is to develop a factual record upon which the agency can act, and to provide interested parties with an opportunity to comment on what policies should be formulated by the agency. These considerations have no application to an agency's interpretation of a

[29] See also *Columbia Broadcasting System, Inc.* v. *United States*, 316 U.S. 407, 421 (1942). It is noteworthy that the Court in *Bell Aerospace* held that rulemaking was unnecessary even though it concededly "would provide the Board with a forum for soliciting the informed views of those affected in industry and labor before embarking on a new course." 416 U.S. at 295.

Petitioners' reliance on the combined effect of the plurality and dissenting opinions in *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969), is misplaced. The limited significance of that case was explained by this Court in *Bell Aerospace*. See 416 U.S. at 293-94. In any event, *Wyman-Gordon* is irrelevant to the case at hand. In *Wyman-Gordon* the agency attempted to formulate policy and adopt a legislative rule of general application in the course of an adjudicatory proceeding. That is a far cry from the Commission's action in this case, which involved only interpretation of the meaning of a statute and its legislative history.

statute, which involves construction of the language of the statute and its legislative history and is "subject to plenary judicial review."[30] The Commission correctly proceeded by declaratory order in its 1962 and 1964 cases interpreting Section 315(a)(4) in the context of press conferences and debates, and it was equally appropriate for it to act by declaratory order to overrule those decisions.

Finally, it bears emphasis that the views of petitioners were in fact presented at length and fully considered by the Commission.[31] Moreover, under Section 405 of the Communications Act, 47 U.S.C. § 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, any other interested parties could have filed petitions for reconsideration of the Commission's declaratory ruling whether or not they participated at earlier stages of the proceeding.[32] No such petitions for reconsideration were filed.

In sum, rulemaking proceedings were not legally required in this case, all interested persons had ample opportunity for the presentation of views to the Commission, petitioners' views in fact were presented, and no useful purpose would be served by requiring the Commission now to initiate rulemaking proceedings.

[30] Staff of Senate Comm. on the Judiciary, *Report on Administrative Procedure Act—Legislative History*, S. Doc. No. 248, 79th Cong., 2d Sess. 18 (Comm. Print 1945). See, *e.g.*, *Pickus* v. *United States Board of Parole*, 507 F.2d 1107, 1113 (D.C. Cir. 1974); *Eastern Kentucky Welfare Rights Org.* v. *Simon*, 506 F.2d 1278, 1290 (D.C. Cir. 1974); *Pesikoff* v. *Secretary of Labor*, 501 F.2d 757, 763 n.12 (D.C. Cir.), *cert. denied*, 419 U.S. 1038 (1974).

[31] Petitioners DNC, Chisholm and NOW filed extensive comments on the CBS and Aspen petitions prior to the Commission's ruling.

[32] In *Banzhaf* v. *FCC*, 405 F.2d 1082, 1104 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969)—a case in which the Commission promulgated a clearly *substantive* rule without giving notice to or receiving comment from any parties (not even the station named in the complaint)—the court relied upon the petition for reconsideration provision as full protection for the rights of those not originally participating in the case.

CONCLUSION

For the foregoing reasons, the petitions for certiorari should be denied.

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